

A credibility issue arises here as to whether the release agreement was intended to restrict the activities of Rabbitt at the Emery mines. Rabbitt expressed such an opinion but no collateral evidence supports such a conclusion. Accordingly, I reject such a construction of the evidence. Emery's reasons for requiring various parties to sign the release and waiver are credible and detailed in the summary of the evidence. However, the record indicates that the potential exposure for possible claims from this class of persons was within Emery's initial coverage of \$1,500,000. In addition, the insurance problem was resolved when Utah Power and Light took over the operation of its mines.

In any event, § 103(f) does not condition the international representative's access upon a waiver of that person's right to seek redress for injuries that might be sustained as a result of the operator's negligence. The right to apply to the courts for relief from the perpetration of a wrong is a substantial right. Bracken v. Dahle et al, 68 Utah 486, 251 P. 16 (1926).

In addition, the State of Utah's Constitution in Article I, Section 11 provides as follows:

All courts shall be open, and every person, for an injury done to him in his person, property or reputation, shall have remedy by due course of law, which shall be administered without denial or unnecessary delay; and no person shall be barred from prosecuting or defending before any tribunal in this State, by himself or counsel, any civil cause to which he is a party.

The State of Utah has included the above right within the protection of its constitution. It would appear that if Emery's position were sustained, serious 10th Amendment implications could arise.

Emery may well have the right, in dealing with the members of the public, to condition access to its mine. There are certain benefits accruing to sales representatives and similar persons in entering a mine. The signing a waiver in those cases is an appropriate quid pro quo for the expanded business opportunity. But the person seeking access here is acting under a statutory provision. The Commission has noted that access under this provision plays an important role in the overall enforcement scheme of the Act. It is therefore inappropriate for Emery to equate the UMWA international representative's access with that of a sales representative in determining the appropriateness and validity of the operator's release and waiver requirement. Providing access to the former was determined by Congress to be an important means of achieving the goal of improved health and safety in our nation's mines. Providing access to sales representatives and the like does not relate to the achievement of goals that are in the public interest and that matter is left to the operator's discretion.